RE PANGLOBAL BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[ORIGINATING SUMMONS NO: D4-24-424 OF 1998]
14 SEPTEMBER 1998

COMPANY LAW: *Arrangements and reconstructions - Restraining order - Application to restrain creditor from appointing receiver and manager - Whether such appointment would affect acceptability of scheme - What may be restrained by application under s. 176(10) Companies Act 1965 - Whether application to restrain creditor must be served on creditor*

This was an application pursuant to s. 176(10) of the Companies Act 1965 for certain restraining orders. The first applicant applied to restrain AMMB International (Labuan) Ltd ('AMIL'), a scheme creditor, to be restrained from appointing a receiver and manager because if that were done the applicants would be deprived of any opportunity to promote the scheme. AMIL was entitled to appoint a receiver and manager by virtue of the fact that it was holding a debenture on certain assets as security for a loan granted to the first applicant. Additionally, the fifth applicants, who had assigned certain rentals to Phileo Allied Bank as security for a loan, applied for an order restraining the enforcement of the said assignment on the ground that if rentals were paid to the assignee, the acceptability of the scheme might be prejudiced. It was in evidence that the creditors who would be affected by the restraining orders were not served with this application.

Held:

[1] Only further proceedings in a pending action or proceeding may be restrained under s. 176(10) of the Companies Act 1965.

[2] This application ought to be served on the creditors whose actions or proceedings are sought to be restrained, so that they may have an opportunity to oppose the application for the restraining order. However, in respect of AMIL, an interim order to last for two weeks is ordered restraining it from enforcing its rights under the debenture.

[3] Due to the lack of information about the incidents and terms of the assignment, it could not be assessed whether, in respect of the assignment, it can possibly be said that there is a pending action or proceeding. The manner in which the enforcement of the assignment is likely to prejudice the acceptability of the scheme is also not clear and thus a restraining order in respect of the assignment is not ordered.

[Order accordingly.]

Legislation referred to:
Companies Act 1965 s. 176(10)

For the applicants - Bharti Seth; Bharti Seth & Assocs

Reported by S Dharmendran

JUDGMENT

Abdul Aziz Mohamad J:

As I have said earlier, this is a D4 case that is before me in my capacity as a vacation judge. The last day of the current court vacation is 19 September.

After hearing counsel on several occasions, particularly on the question posed by me as to whether, in view of the restraining order sought, this application ought to be served on the creditors that will be affected by the restraining order, I make the following decisions and orders.

I postpone this application to 21 September for mention before the learned D4 judge.

I am of opinion that only further proceedings in a pending action or proceeding may be restrained under s. 176(10) of the Companies Act 1965.

I am also of opinion that this application ought to be served on the creditors whose actions or proceedings are sought to be restrained, so that they may have an opportunity to oppose the application for the restraining order.

Learned counsel for the applicants has indicated that further proceedings in the pending actions listed in exh. 8 to encl. (2) need not, at least for the time being, be restrained because the creditors in those actions will not be included among the scheme creditors.

There is, therefore, only one matter that might be regarded as a pending action or proceeding by a scheme creditor. The scheme creditor is AMMB International (Labuan) Ltd ('AMIL'), who hold a debenture on the assets, etc of LTL ('the third applicants') as one of the securities for a loan of RM211,534,000 granted by AMIL to PGB ('the first applicants'). AMIL have called in the loan and they are entitled at any time now to enforce their rights under the debenture, including the right to appoint a receiver and manager of the assets, etc of LTL.

I order that this application be served on AMIL.

As the applicants fear that AMIL may appoint a receiver and manager at any time now, and that if that were to happen they will be deprived of any

opportunity to promote the scheme, I make an interim order, to last for two weeks from today, restraining AMIL from enforcing their rights under the debenture.

Besides the AMIL debenture, there is only one other matter relating to the question of pending actions and proceedings about which counsel has expressed concern. It is an assignment by MPG ('the fifth applicants') to Phileo Allied Bank of certain rentals as one of the securities for a loan of RM163,749,000. It was feared that if the assignment were enforced and the rentals were paid to the assignee, the acceptability of the scheme might be prejudiced. Counsel felt that a restraining order in respect of the assignment was necessary. Due to lack of information about the incidents and terms of the assignment, I have not been able to assess whether, in respect of the assignment, it can possibly be said that there is a pending action or proceeding. Neither have I been able to appreciate the manner in which the enforcement of the assignment is likely to prejudice the acceptability of the scheme. I therefore decline to make any restraining order in respect of the assignment. The applicants are given the liberty to make a separate application for a restraining order specifically in respect of the assignment, giving by affidavit the necessary information in support.